

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:23-cv-24600-KMM

SOFIA RECA and GPR 5 LLC,

Petitioners,

v.

INTERNAL REVENUE SERVICE, *et al.*,

Respondents.

ORDER ON REPORT AND RECOMMENDATION

THIS CAUSE came before the Court upon Respondent United States of America's ("the Government") Motion to Dismiss Petition to Quash Summons. ("Mot.") (ECF No. 7). Therein, the Government moves to dismiss Petitioners Sofia Reca and GPR 5 LLC's (collectively, "Petitioners") Petition to Quash Summons, ("Petition") (ECF No. 1), pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). *See generally* Mot. This matter was referred to the Honorable Marty Fulgueira Elfenbein, United States Magistrate Judge, to take all necessary and proper action as required by law and/or for a Report and Recommendation with respect to the Petition to Quash Summons. *See* (ECF No. 14). On May 22, 2024, Magistrate Judge Elfenbein issued a Report and Recommendation, ("R&R") (ECF No. 15), recommending that the Motion be GRANTED, that the Petition be DISMISSED, and that Petitioners' request for an evidentiary hearing be DENIED. No objections to the R&R were filed, and the time to do so has passed. The matter is now ripe for review.¹ As set forth below, the Court ADOPTS the R&R.

¹ The Court assumes the Parties' familiarity with the facts and procedural history, which are set forth in the R&R. *See* R&R at 1–4.

I. LEGAL STANDARD

The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The Court “must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3). A *de novo* review is therefore required if a party files “a proper, specific objection” to a factual finding contained in the report. *Macort v. Prem, Inc.*, 208 F. App’x 781, 784 (11th Cir. 2006). “It is critical that the objection be sufficiently specific and not a general objection to the report” to warrant *de novo* review. *Id.* Yet when a party has not properly objected to the magistrate judge’s findings, “the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Keaton v. United States*, No. 14-21230-CIV, 2015 WL 12780912, at *1 (S.D. Fla. May 4, 2015) (citation omitted); *see also Lopez v. Berryhill*, No. 17-CV-24263, 2019 WL 2254704, at *2 (S.D. Fla. Feb. 26, 2019) (stating that a district judge “evaluate[s] portions of the [R&R] not objected to under a clearly erroneous standard of review” (quoting *Davis v. Apfel*, 93 F. Supp. 2d 1313, 1317 (M.D. Fla. 2000))).

II. DISCUSSION


As set forth in the R&R, Magistrate Judge Elfenbein concludes that the Petition should be dismissed because: (1) the Court lacks subject-matter jurisdiction to consider the Petition as it relates to Ms. Reca; *see* R&R at 4–5; (2) the Petition is untimely under § 7609(b)(2)(A), *see id.* at 6–7; and (3) even if the Petition were timely and did not suffer from a jurisdictional deficiency, the Motion must be granted and the Petition dismissed because the Government established that it issued the Summons in good faith and Petitioners failed to provide specific facts to raise an inference of bad faith on the Government’s part, *see id.* at 7–14. Magistrate Judge Elfenbein

further concludes that Petitioners have failed to offer any credible evidence supporting their claim that the Government issued the Summons in bad faith, making an evidentiary hearing unnecessary. *See id.* at 14–15. Upon review, this Court agrees with Magistrate Judge Elfenbein’s analysis and conclusion that Petitioners’ attack on the Summons’s validity fails and the Petition must be dismissed.

III. CONCLUSION

Accordingly, UPON CONSIDERATION of the Motion, the R&R, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the R&R (ECF No. 15) is ADOPTED. Respondent United States of America’s Motion to Dismiss Petition to Quash Summons (ECF No. 7) is GRANTED, and Petitioners Sofia Reca and GPR 5 LLC’s Petition to Quash Summons (ECF No. 1) is DISMISSED. Petitioners’ request for an evidentiary hearing is DENIED. The Clerk of Court is INSTRUCTED to CLOSE this case. All pending motions, if any, are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 13th day of June, 2024.



K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record